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Intergovernmental Group of Experts on
Restrictive Business Practices
Eleventh session
Geneva, 23 November 1992
Agenda item 8

DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES ON ITS ELEVENTH SESSION

Held at the Palais des Nations, Geneva,
from 23 to 27 November 1992

Rapporteur: Mr. Donald Partridge (Canada)

Addendum

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GE.92-53025/0709A (E)

Chapter I (continued)

REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 3)

ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET:

(a) STUDIES ON RESTRICTIVE BUSINESS PRACTICES RELATED TO THE PROVISIONS OF THE SET OF PRINCIPLES AND RULES;

(b) INFORMATION AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES;

(c) THE MODEL LAW OR LAWS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES AND THE HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION;

(d) TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES

(Agenda item 4)

WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES

(Agenda item 5)

47. The representative of Poland described the provisions and implementation of the Polish Antimonopoly Act of 1990 (amended in 1991), and the administration of its Antimonopoly Office. In conformity with the Constitution, the Act was aimed at the elimination of barriers to competition and the creation of a new business culture, in the context of policies of stabilization, demonopolization and privatization. Implementation had been difficult because of the legacy from a centrally-planned economy. She emphasized that a thorough rule of reason was applied in economic analysis. Over 280 decisions had been made by the Office against RBPs, mainly relating to dominant positions, cartels and market allocation. Special problems had been experienced with natural monopolies. The Office had been reluctant to control prices, finding that exposure to competition from imports was more effective. However, a balanced approach to imports was applied to avoid bankrupting firms.

48. Out of 1,200 notifications to the Office concerning transformation and establishment of new firms, 60 conditional approvals and 60 adverse decisions had been made. A 100 firms had been removed from the Government's list for mass privatization in order to avoid the creation of private monopolies, and priority had been given to restructuring to strengthen competition and efficiency. The main emphasis of the Office was on the creation of competitive markets so as to deal with the causes rather than the effects of RBPs. The microeconomic studies of the Office provided inputs in the formulation of macroeconomic policy, and the Office exercised an advocacy function for competition in formulating new legislation.

49. However, the Office had encountered some opposition because it was felt that large firms were more competitive and because of protectionist regimes in foreign markets, particularly for agricultural products. The Office had also had experiences with RBPs by foreign investors, which gave a bad example and involved difficult trade-offs. The Office greatly appreciated the contacts with or cooperation received from Germany, the United States, the EEC, the OECD, Czechoslovakia and Hungary. The representative of Poland expressed satisfaction with the multilateral cooperation within the Intergovernmental Group of Experts, and requested that UNCTAD organize projects or studies on the specific competition issues facing countries in transition towards a market economy as well as on competition issues relating to foreign investment in developing countries and countries in transition.

50. The representative of the United States of America stated that he hoped all delegations would participate in the multilateral consultations held during the present session and make contributions to them. He further hoped that the IGE would be an attractive forum for exchanges of views on substantive competition issues in a spirit of openness.

51. The representative of Germany stated that difficulty in establishing and securing a framework for business activity and competition was common not only to eastern European countries and developing countries, but at present also to a developed country such as his own. The challenge stemmed from his country's move towards economic unity following the change over in the former German Democratic Republic to a market economy, which called for measures to orient

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Agenda items 3, 4 and 5

REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET

WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES

Draft agreed conclusions submitted by the Chairman

The eleventh session of the Intergovernmental Group of Experts on Restrictive Business Practices, having met from 23 to 27 November 1992, agrees to the following conclusions:

A. Item 4(a) - Studies

The secretariat should:

(i) finalize the valuable study on "Concentration of market power" taking into account the comments made at the current session and written comments to be submitted by member States no later than the end of January 1993; and

(ii) prepare a study on "Competition and economic reforms in developing and other countries", for the twelfth session of the IGE, on the basis of the outline as revised by the Group. Appropriate coordination with the Ad hoc Working Group on Comparative Experiences with Privatization should be ensured.

economic order and market structures towards competition and private ownership as soon as possible so that the consequences of the former command economy could be eliminated without delay.

52. He indicated that the necessary adjustment process had jeopardized up to 90 per cent of all jobs in the new Federal Laender. As a result, pressures had been put on the Government to slow down the process by granting subsidies to secure at least parts of the old non-competitive industrial structures and by increasing payments to affected parties to cushion social problems. In spite of the conflict between competition and social policy, his country would press ahead with the privatization of state-owned firms and public services. Treuhandanstalt, the Government agency in charge of privatization, had meanwhile sold 9,000 former German Democratic Republic firms out of a total of about 12,000, which was no mean achievement. His country would also continue to promote competitive corporate structures, to prevent anticompetitive concentration of market power and to improve the conditions for market entry by removal of the regulations and other barriers to this. International confidence also helped in the process of economic renewal. As of the end of October 1992, some 500 German firms had been sold to foreign investors. The investment outlay of some DM 15 billion was thought to have safeguarded nearly 150,000 jobs. However, much remained to be done before the ultimate aim of establishing equal living conditions throughout the whole of Germany was accomplished.

53. With regard to enforcement measures taken by his country against RBPs, he referred to the written report submitted to the secretariat and published in document TD/B/RBP/89.

54. The representative of the Russian Federation stated that the Deputy Chairman of the Anti-Monopoly Committee of Russia had been expected to participate in the eleventh session of the Intergovernmental Group of Experts, but had been unable to attend at the last minute. He recalled that the IGE had been informed at its tenth session about the legislative basis that had been adopted, and the creation of the appropriate Anti-Monopoly Committee. Since then major changes had taken place which had important implications in the area of competition. The Government had adopted reforms in numerous areas, such as convertibility of the national currency, reform of the banking

system, revision of principles of taxation, and of investment rules - all of which were important in the transition to a market economy and had a strong impact on competition.

55. The process of demonopolization had to be considered in relation to overall economic and social problems. The structure of business and industry was such that it was not immediately competitive. Possibly 50 per cent could prove to be uncompetitive and go bankrupt if suddenly exposed to competition. This could create millions of unemployed. In spite of these enormous difficulties, the process of transition to a market economy was continuing. The Government was interested in drawing on the experience of other East European countries in the process of transition to a market economy, as well as that of developed market-economy countries, and hoped that UNCTAD would be instrumental in bringing about an exchange of experiences in that area. After commending the UNCTAD secretariat for the documentation submitted to the present session, he fully supported the proposal by the representative of Poland that a study should be undertaken by the secretariat on the role of competition in countries in transition to a market economy.

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

56. The eleventh session of the Intergovernmental Group of Experts on Restrictive Business Practices was opened on 23 November 1992 by Mr. E.T. Hand (United States), Vice-Chairman at the tenth session, as Mr. T.A. Ogada (Kenya) Chairman of the Intergovernmental Group of Experts at its tenth session, was unable to be present.

B. Election of officers

(Agenda item 1)

57. At the 1st plenary meeting of its eleventh session, on 23 November 1992, the Intergovernmental Group of Experts elected the following Bureau:

Chairman:	Mr. Gonzalo Santos	(Philippines)
Vice-Chairmen:	Mr. Calson Mbegabolawe	(Zimbabwe)
	Mr. P.L. Sanjeev Reddy	(India)
	Mr. Roberto Villambrosa	(Argentina)
	Mr. Henry Emden	(United Kingdom)
	Mr. Frantisek Peer	(Czechoslovakia)
Rapporteur:	Mr. Donald Partridge	(Canada)

C. Adoption of the agenda and organization of work

(Agenda item 2)

58. Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/86), as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices
4. Activities relating to specific provisions of the Set:
   (a) Studies on restrictive business practices related to the provisions of the Set of Principles and Rules;

(b) Information and consultations on restrictive business practices;

(c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

(d) Technical assistance, advisory and training programmes on restrictive business practices.

5. Work programme on restrictive business practices

6. Provisional agenda for the twelfth session of the Intergovernmental Group of Experts

7. Other business

8. Adoption of the report of the Intergovernmental Group of Experts

D. Provisional agenda for the twelfth session of the Intergovernmental Group of Experts

(Agenda item 6)

59. At its ..... (closing) meeting, on .. November 1992, the Intergovernmental Group of Experts approved the draft provisional agenda for its twelfth session (TD/B/RBP/L.59).

E. Membership and attendance

[to be completed]

F. Adoption of the report of the Intergovernmental Group of Experts

(Agenda item 8)

60. At its ..... (closing) meeting, on 27 November 1992, the Intergovernmental Group of Experts adopted its draft report (TD/B/RBP/L.58 and Add.1-3) [with some amendments] and authorized the Rapporteur to complete the report to reflect the proceedings at the closing plenary.